

James J. Hayes  
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Annandale, VA 22003  
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jjhayes@toast.net

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August 13, 2018

Hon. Robert W. Sweet  
U.S. District Court, S.D.N.Y.  
U. S. Courthouse  
500 Pearl Street  
New York, NY 10007

*In Re Facebook, Inc. IPO Securities and Derivative Litigation*  
MDL No. 12-2389 (RWS)

Objection to Proposed Settlement and Untimely Notice Packets to Retail Subclass  
Investors Served by E\*Trade and other Unidentified Brokers

Dear Judge Sweet:

I am a Class Member having purchased 1,000 shares of Facebook on May 17, 2012 at \$38 per share and sold 500 of these shares at \$26 per share on December, 21 2012, and the remaining 500 shares at \$26.71 per share on December, 31, 2012. (E\*Trade brokerage confirmations attached)

I have two objections. First, I object to the settlement of Lead Plaintiffs' Securities Act claims to the extent that the proposed release contains a waiver of Exchange Act claims against Defendant Morgan Stanley, as set forth in ¶¶46-47. Lead counsel did not make Exchange Act claims. Second, I object that I received my Notice Packet on August 3, 2018, or well after the July 24, 2018, deadline for submitting a Claim Form. As a result, I cannot make a claim, and I think it is fair to assume there are other class members in the same situation.

**Exchange Act Claims**

By order dated December 6, 2012, the Court denied a request for separate lead counsel for Securities Act and Exchange Act claims, and consolidated the claims for single lead counsel. *In re Facebook, Inc. IPO Securities & Deriv. Litigation*, 288 F.R.D. 26, 34-36 (SDNY 2012).

An Exchange Act action against Morgan Stanley would target billions of dollars in losses caused by the 18% decline in Facebook stock from its \$38 IPO price, which Lead Plaintiffs have failed to recover with their Security Act claims. I objected to lead counsel not bringing an Exchange Act claim. For unexplained “strategic reasons” the Lead Plaintiffs did not include the Exchange Act claims against Morgan Stanley.<sup>1</sup> But it was Morgan Stanley whose actions as lead underwriter and book runner caused the price drop in Facebook’s stock. While \$35 million could be a fair settlement of Security Act claims against Facebook, and the other 32 Underwriter Defendants; it would be unfair to the Class for the Court to release potential claims under the Exchange Act against Morgan Stanley as a part of the Settlement.

Including Exchange Act claims against Morgan Stanley is not a choice, but a necessary complement to challenge transactions that transcend the two pillars of securities law. In the week preceding the IPO, Morgan Stanley made public statements that Facebook stock would be priced to reflect extraordinary high institutional demand and that institutional orders were not significantly reduced by decisions to increase both the size and price of the offering or Facebook’s amended prospectus, which reduced its revenue growth projections. The NY Times reported: “a banker involved in the process” saying that the \$38 figure was chosen because “demand was astronomical”. However, Morgan Stanley’s statements implying the IPO was significantly oversubscribed were materially false and misleading. When institutions confirmed their orders after the final pricing was announced on May 17, 2012; Morgan Stanley knew that institutional orders were substantially less than the 421 million shares the underwriters had committed to sell. (This deficit included the retail allocations, which Morgan Stanley increased significantly in the week preceding the IPO.)

In rejecting my protest regarding the failure to assert Exchange Act claims, Lead Counsel wrote that under the Court’s December 6, 2012, order “tactical decisions, such as which claims to assert, are the prerogative of Lead Plaintiffs.” But the Court’s order explicitly noted that Lead Counsel “is charged with acting in the best interest of all class members.” 288 F.R.D. at 36. Neither the failure to assert billions of dollars of Exchange Act claims, nor the waiver of those claims in the settlement, serves the best interest of all class members.

#### **Exchange Act Claims against Morgan Stanley Not Securities Act Claims Against Facebook Satisfy Loss Causation Concerns**

The billions of dollars of Class loses were caused by Morgan Stanley’s overpricing the IPO and not by Facebook’s allegedly false and misleading statements. All the institutional allocants knew, or could have known, that Morgan

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<sup>1</sup> October 19, 2015 letter from Thomas A. Dubbs attached as Exhibit A.

Stanley misrepresented the fact that offer was significantly oversubscribed when their order confirmations (delivered before the stock market opened on May 18, 2012) showed they were allotted 100% of their orders. At the same time, these same intuitions and many retail allocants were solicited by Morgan Stanley brokers to purchase additional shares.

On May 18, 2012, the widespread knowledge the IPO was undersubscribed caused many institutional allocants to place increasing numbers of market sell orders into NASDAQ's pre-market IPO Cross. This occurred at the same time that limit sell orders swamped record numbers of limit buy orders from public investors responding to Morgan Stanley's decision to price the IPO at the highest price of an increased range. (Morgan Stanley's pricing was a signal the offer was significantly oversubscribed.) Then as the published indicated opening price fell lower and lower, the market sell order imbalance increased with every new indication until Morgan Stanley, who managed the IPO Cross, requested and was granted a delay in the opening of market trading. During the delay, NASDAQ officials conferred and set the opening price at the last indicated price prior to the delay, which was not a market clearing price given the large balance of market sell orders. It was Morgan Stanley's silence on the market sell order imbalance created by its pricing decision that led to bad NASDAQ decisions. Left unexplained was how the Morgan Stanley managed operation failed to execute the large numbers of pre-market, sell at market orders that continued to accumulate during the delay. These orders were executed several hours after the market open and caused FB's share price to drop and to continue declining to close at \$38.23 per share.

In pre-market trading on May 21, 2012, Facebook shares began the 18% decline cited by Lead Plaintiffs when Morgan Stanley failed, or was unable to defend its IPO price by buying Facebook stock to cover its greenshoe short position. Morgan Stanley's decision not to defend its \$38 price provided the lead underwriters a \$120 million trading profit.

#### Untimely Service of Notice Packets

I object to the delayed Notice Packets sent to potential members of the Retail Investor Subclass. I received my Notice Packet on August 3, 2018. An included cover letter explained that Packets sent to potential Class Members purchasing Facebook stock thru E\*Trade were mailed "after or near deadlines set forth in the Notice".<sup>2</sup> These deadlines include the deadline to submit a Claim Form, which must be postmarked no later than July 24, 2018 and the August 15, 2018 deadline to file an objection with Clerk's Office, but served on Lead Counsel and Defendant's Counsel so that the papers are *received* on or before August 15, 2018. (Emphasis in Notice)

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<sup>2</sup> Claims Administrator's cover letter sent with Notice Packet for E\*Trade clients attached as Exhibit B.

c. (with attachments)  
John Rizzio-Hamilton  
James W. Johnson  
Andrew Clubok  
James P. Rouhandeh

EXHIBIT A

**Labaton  
Sucharow**

Thomas A. Dubbs  
Partner  
212 907 0871 direct  
212 883 7071 fax  
tdubbs@labaton.com

October 19, 2015

VIA E-MAIL

Mr. James J. Hayes  
4024 Easterbrook Dr.  
Annandale, VA 22003

Re: *In re: Facebook, Inc., IPO Securities & Derivative Litigation*, No. 12-md-2389-RWS

Dear Mr. Hayes:

We represent the court-appointed Lead Plaintiffs in the above-referenced matter (the "Action"). We write in response to your letters of September 9 and 14, 2015, requesting that Lead Plaintiffs amend the operative complaint in the Action (the "Complaint") to include securities fraud claims under the Exchange Act of 1934 (the "Exchange Act") against Defendant Morgan Stanley.

After substantial deliberation and research, Lead Plaintiffs chose not to assert Exchange Act claims against Morgan Stanley. Rather, Lead Plaintiffs chose to assert claims under the Securities Act of 1933 (the "Securities Act") against Morgan Stanley for strategic reasons. *See, e.g., In re Morgan Stanley Info. Fund Sec. Litig.*, 592 F.3d 347, 359-60 (2d Cir. 2010) (reasoning that Securities Act claims "give rise to liability more readily" than Exchange Act claims). As the Court has held in this Action, tactical decisions, such as which claims to assert, are the prerogative of Lead Plaintiffs. *See In re Facebook, Inc. IPO Securities & Deriv. Litig.*, 288 F.R.D. 26, 36 (S.D.N.Y. 2012) (holding that "the determination of which claims to assert in the consolidated complaint will be determined by the Court-appointed lead plaintiff, who is charged with acting in the best interest of all class members").

Lead Plaintiffs continue to believe that their decision to assert only Securities Act claims against Morgan Stanley was in the best interests of the putative class.

Very truly yours,



Thomas A. Dubbs

cc: Hon. Robert W. Sweet  
John Rizio-Hamilton, Co-Lead Counsel for Lead Plaintiffs



EXHIBIT B

***IN RE FACEBOOK, INC. IPO SECURITIES AND DERIVATIVE LITIGATION***  
**MDL NO. 12-2389 (RWS)**

**Please read this cover letter carefully before reading the enclosed materials**

Dear Potential Class Member,

The enclosed Notice Packet was previously provided to brokers and other nominees and they were directed to (a) within ten (10) business days of receipt of the Notice Packet, request from us sufficient copies of the Notice Packet to forward to all such beneficial owners; or (b) provide a list of the names and addresses to us of all such beneficial owners.

However, we did not receive your name and address from E\*Trade until July 10, 2018. Please note that, because of the delay in our receipt of your name and address, you may be receiving this Notice Packet after or near the deadlines set forth in the Notice, including the Claims filing deadline which was July 24, 2018. However, if you believe you are a Class Member and wish to be eligible to participate in the Settlement, please submit your Claim Form and supporting documentation as soon as possible. Along with your submission, please include a note that you received the Notice Packet late based on E\*Trades' late request. While we cannot guarantee that the Court will accept late claims, if your claim is otherwise eligible, Lead Counsel will ask the Court to accept it.

If you have any questions with respect to the Notice Packet, please do not hesitate to contact us toll-free at 866-963-9974 or emailing [info@FacebookSecuritiesLitigation.com](mailto:info@FacebookSecuritiesLitigation.com), or visiting the Facebook settlement website, [www.FacebookSecuritiesLitigation.com](http://www.FacebookSecuritiesLitigation.com).

Very truly yours,

A.B. DATA, LTD.  
Claims Administrator




**E\*TRADE Securities**  
**Investment Account**
**TRADE CONFIRMATION**
**Account Number:** 5557-9277

**Account Type:**
**E\*TRADE Securities LLC**  
 PO Box 484  
 Jersey City, NJ 07303-0484  
 1-800-ETRADE-1 (1-800-387-2331)  
 etrade.com

**Account Name:**

CAROLINA SHAREHOLDERS

**Customer Update**

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| TRADE DATE | SETL DATE | MKT / CPT | SYMBOL / CUSIP | BUY / SELL | QUANTITY | PRICE   | ACCT TYPE |                   |                    |
|------------|-----------|-----------|----------------|------------|----------|---------|-----------|-------------------|--------------------|
| 05/18/12   | 05/22/12  | 6 7       | FB             | BUY        | 500      | \$38.00 | Cash      | PRINCIPAL         | \$19,000.00        |
|            |           |           |                |            |          |         |           | <b>NET AMOUNT</b> | <b>\$19,000.00</b> |

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| Margin | PRINCIPAL         |  |
|        | COMMISSION        |  |
|        | <b>NET AMOUNT</b> |  |

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 CAROLINA SHAREHOLDERS  
 4024 ESTABROOK DRIVE  
 ANNANDALEVA 22003-2411

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 PO Box 484  
 Jersey City, NJ 07303-0484

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**E\*TRADE Securities**  
 Investment Account

**TRADE CONFIRMATION****Account Number:** XXXX-1485**Account Type:****E\*TRADE Securities LLC**

PO Box 484

Jersey City, NJ 07303-0484

1-800-ETRADE-1 (1-800-387-2331)

etrade.com

**Account Name:**

JAMES J HAYES

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| TRADE DATE | SETL DATE | MKT / CPT | SYMBOL / CUSIP | BUY / SELL | QUANTITY | PRICE   | ACCT TYPE |                   |                    |
|------------|-----------|-----------|----------------|------------|----------|---------|-----------|-------------------|--------------------|
| 12/21/12   | 12/27/12  | 3 1       | FB             | SELL       | 500      | \$26.00 | Margin    | PRINCIPAL         | \$13,000.00        |
|            |           |           |                |            |          |         |           | COMMISSION        | \$19.99            |
|            |           |           |                |            |          |         |           | FEE               | \$0.30             |
|            |           |           |                |            |          |         |           | <b>NET AMOUNT</b> | <b>\$12,979.71</b> |

FACEBOOK INC CL A  
 AS OF 12/21/12  
 OPTION ASSIGNMENT  
 CALL FB 12/22/12 26

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 JAMES J HAYES  
 4024 ESTABROOK DRIVE  
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**E\*TRADE Securities**  
 Investment Account

**TRADE CONFIRMATION**

Account Number: XXXX-9277

Account Type:

E\*TRADE Securities LLC

PO Box 484

Jersey City, NJ 07303-0484

1-800-ETRADE-1 (1-800-387-2331)

etrade.com

Account Name:

CAROLINA SHAREHOLDERS

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| TRADE DATE | SETL DATE | MKT / CPT | SYMBOL / CUSIP | BUY / SELL | QUANTITY   | PRICE      | ACCT TYPE |            |
|------------|-----------|-----------|----------------|------------|------------|------------|-----------|------------|
| 12/31/12   | 01/04/13  | 6 1       | [REDACTED]     | [REDACTED] | [REDACTED] | [REDACTED] | Margin    | PRINCIPAL  |
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|            |           |           |                |            |            |            |           | FEE        |
|            |           |           |                |            |            |            |           | NET AMOUNT |
| 12/31/12   | 01/04/13  | 6 1       | FB             | SELL       | 500        | \$26.7115  | Margin    | PRINCIPAL  |
|            |           |           |                |            |            |            |           | COMMISSION |
|            |           |           |                |            |            |            |           | FEE        |
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| 12/31/12   | 01/04/13  | 6 1       | [REDACTED]     | [REDACTED] | [REDACTED] | [REDACTED] | Margin    | PRINCIPAL  |
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|            |           |           |                |            |            |            |           | FEE        |
|            |           |           |                |            |            |            |           | NET AMOUNT |



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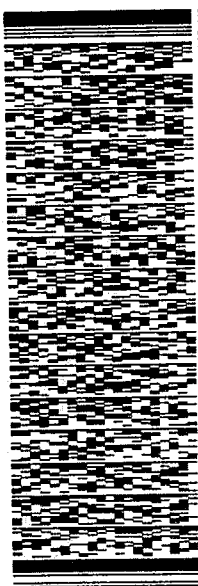
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JAMES, JOSEPH HAYES  
4024 ESTABROOK DR  
ANNANDALE, VA 22003  
UNITED STATES US

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CAD: 6992889/55F019

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RM 200  
NEW YORK NY 10007

(212) 806-0176 REF:  
INV: DEPT:



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